
**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 MHz Bands)	
)	
Former Nextel Communications, Inc.)	WT Docket No. 06-169
Upper 700 MHz Guard Band Licenses and)	
Revisions to Part 27 of the Commission's)	
Rules)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	
)	
Development of Operational, Technical)	WT Docket No. 96-86
and Spectrum Requirements for Meeting)	
Federal, State and Local Public Safety)	
Communications Requirements Through)	
the Year 2010)	

To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION

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SUMMARY

Dobson Communications Commission (“Dobson”) urges the Commission to adopt a band plan for the unauctioned commercial spectrum in the 700 MHz band that includes at least three licenses based on Cellular Market Areas (“CMAs”) and Economic Areas (“EAs”). This will promote spectrum access to a diverse group of potential licensees by providing smaller providers and new entrants with multiple opportunities to obtain spectrum and giving them the flexibility to combine varying amounts of spectrum to accommodate future needs.

Dobson remains opposed to “keep what you use” re-licensing as a general matter because it throws the market into flux and has the negative effect of encouraging multiple carriers to inefficiently devote resources to areas solely for the preservation of future expansion opportunities. If the Commission is inclined to impose stricter performance requirements, then Dobson supports use of a geographic coverage requirement with “keep what you use” re-licensing for small-sized areas only – CMAs and EAs – but not for licenses based on Regional Economic Area Groupings (“REAGs”). Any geographic-based benchmark should provide licensees with sufficient time and flexibility to develop business plans for the spectrum and to deploy it in an efficient and meaningful way, *e.g.*, the Commission should impose only a single eight-year coverage benchmark.

For REAGs, strict geographic performance requirements are ill conceived and should not be imposed. The Commission should allow REAG licensees to either satisfy a population coverage requirement or provide “substantial service.”

The Commission should not adopt “anonymous” bidding procedures for the upcoming 700 MHz band auction. Full disclosure in the bidding process has proven highly successful, and any perceived harm from open bidding is outweighed by the benefits. Knowing who is bidding on which licenses helps smaller participants gauge the competitive landscape for legitimate business strategies.

Dobson urges the Commission to refrain from imposing “open access” requirements on unauctioned commercial spectrum in the 700 MHz band. The wireless marketplace is highly competitive, and there is no evidence of a market failure to justify such governmental regulation.

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To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION

Dobson Communications Corporation ("Dobson") hereby submits its comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.² As demonstrated below, the Commission should set forth rules and policies that encourage the efficient use of spectrum and ensure the rapid deployment of wireless services to rural communities.

¹ Dobson is a provider of rural and suburban wireless communications services in 17 states, from Alaska to New York, with approximately 1.7 million customers and network operations covering a total population of over 12.7 million as of December 31, 2006. Dobson conducts its operations through two subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation, and offers services under the CELLULARONE® brand in all its markets.

² See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72 (rel. Apr. 27, 2007) ("R&O" and "FNPRM").

I. THE BAND PLAN FOR UNAUKTIONED COMMERCIAL SPECTRUM SHOULD INCLUDE AT LEAST THREE LICENSES BASED ON CELLULAR MARKET AREAS (“CMAs”) AND ECONOMIC AREAS (“EAs”).

Dobson supports the Commission’s decision to license spectrum using a mix of geographic service areas, including CMAs and EAs. Dobson urges the Commission to adopt band plans that offer at least three licenses based on CMAs and EAs. This will provide smaller providers, rural carriers, and new entrants multiple opportunities to obtain licenses in the Upper and Lower 700 MHz Bands³ and the flexibility to combine varying amounts of spectrum to accommodate higher data rates and additional capacity needs in the future.

As the Commission has found, use of smaller geographic areas like RSAs and MSAs “allow[s] entities to mix and match rural and urban areas according to their business plans” and will “enhance access to . . . a variety of potential licensees.”⁴ This is supported by the results of the Advanced Wireless Services (“AWS”) auction where a mix of CMA, EA, and licenses based on Regional Economic Area Groupings (“REAGs”) led to a diverse group of winning bidders.⁵ The mix of geographic service areas clearly enabled Dobson to bid on and acquire AWS spectrum in certain rural areas that would have otherwise been impossible to obtain if those areas were only available as part of larger REAG licenses. Using smaller licensing areas helps the Commission to provide a

³ Throughout this comment the 698-806 MHz band will be generally referred to as the “700 MHz Band” while the 698-746 MHz portion of the band will be referred to as the “Lower 700 MHz Band” and the upper 746-806 MHz portion of the band will be referred to as the “Upper 700 MHz Band.”

⁴ *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Order on Reconsideration*, 20 FCC Rcd 14058, 14066¶ 14 (2005) (footnote omitted); *R&O* ¶ 32.

⁵ The record reflects that there was significant participation by small carriers in the AWS auction – 73 applicants filed as rural telephone companies and 100 applicants were granted DE status. *See* CTIA – The Wireless Association (“CTIA”) Comments in WT Docket No. 05-211 at 2 (filed Sept. 20, 2006). Moreover, 68 rural telephone companies or small business entities were the high bidders for 247 licenses. *Id.*

more balanced set of initial licensing opportunities that provide an effective means of promoting access to spectrum especially in rural areas, while effectively meeting other Commission goals.⁶

Dobson therefore supports the Commission's proposal to adopt a band plan for commercial spectrum in the Lower 700 MHz Band that would make two 12 MHz blocks of spectrum available at auction; the A Block licensed according to EAs and the B Block licensed according to CMAs. As the Commission pointed out in the *R&O*, noting the example of a C Block CMA licensee serving an entire market with one cell site, the maximum power limit combined with the associated non-interference requirement in the Lower 700 MHz Band will "maximize both flexibility and freedom from harmful interference 'for the widest number of potential services.'"⁷ This operational flexibility is needed most in sparsely populated rural areas that suffer from proportionally higher costs that hinder commercial deployments. As for the Upper 700 MHz Band, Dobson strongly urges the Commission to adopt a band plan that provides for at least one license block for a smaller geographic area.

11. IF THE FCC IMPOSES GEOGRAPHIC-BASED COVERAGE REQUIREMENTS, THEY SHOULD ONLY APPLY TO SMALLER-SIZED MARKETS, NOT REAGs.

Dobson strongly opposed in its earlier comments a "keep what you use" re-licensing mechanism and instead favored use of a "substantial service" requirement for all commercial 700 MHz Band licenses as used for AWS licenses.' Dobson stated that if alternative build-out rules must be imposed, then a period of time in excess of the five-

⁶ *R&O* ¶¶ 43-44.

⁷ *Id.* ¶ 44.

⁸ Dobson Comments in WT Docket No. 06-150 at 5-10; 47 C.F.R. § 27.14(a)

year build-out for broadband PCS licensees (perhaps seven or eight years) would be appropriate for 700 MHz Band licensees to give them adequate time to construct consistent with prudent business planning.’

Dobson continues to believe that “keep what you use” requirements generally throw the market into flux and have the negative effect of encouraging multiple carriers to inefficiently devote resources to unpopulated or sparsely populated areas solely to preserve future expansion opportunities. The economics of such system construction cannot be justified when the market simply cannot support more than three or four competitors (and in some particularly rural markets, not even three). However, if the Commission is so inclined to impose geographic coverage requirements, then Dobson supports use of a combination of a geographic benchmark and “keep what you use” re-licensing for small-sized service areas only – CMAs and EAs – but not for REAG licenses. For REAG licenses, Dobson continues to support use of a “substantial service” requirement. Should the Commission decide to adopt performance requirements for all licenses, including REAGs, Dobson submits that a population coverage requirement, rather than a geographic area requirement, be imposed.

A. Geographic Coverage Benchmarks Should Apply Only To CMA And EA Licenses.

In the event the Commission decides to impose geographically-based performance requirements on commercial 700 MHz licenses, they should apply solely to smaller licensed areas, such as CMAs and EAs. This would promote deployment of broadband service in rural areas, while avoiding uneconomic construction of systems by larger REAG licensees simply to preserve their licenses.

⁹ Dobson Comments in WT Docket No. 06-150 at 6; 47 C.F.R. § 24.203

Any geographic coverage benchmark should provide licensees with sufficient time and flexibility to develop business plans for the spectrum and to deploy it in an efficient and meaningful way – for example, by imposing the first benchmark requirement at the eight-year mark. The Commission should not adopt construction requirements at the three or five-year mark.” Licensees need flexibility early on in determining the best uses of the spectrum. Interim benchmarks at the three and five-year mark will restrict sound investment practices. Licensees will be forced to construct in parts of their market simply to save market area for future expansion, whether or not such construction provides the best uses for the spectrum or makes the most sense for certain product offerings. Knowing that the 700 MHz spectrum is likely to be used in rolling out new technologies to bring the country next generation broadband services, the Commission should not arbitrarily impose the most stringent construction requirements (*e.g.*, a three-year benchmark) that could result in wasteful expenditures even before technology choices have matured.

If a CMA or EA licensee satisfies the eight-year construction benchmark, then it should be exempt from “keep what you use” re-licensing and entitled to retain the spectrum rights for the entire market area, including the unserved areas.” A licensee failing to satisfy the eight-year benchmark should be subject to “keep what you use” – *i.e.*, the licensee would lose all rights to those areas where it does not employ a signal level sufficient to provide service and would retain rights to those areas of the market

¹⁰ *FNPRM* ¶¶ 211-12.

¹¹ *See, e.g., FNPRM* ¶ 215 (stating that “[a]lternatively, licensees that fail to meet the 75 percent geographic area coverage requirement could be subject to a ‘keep what you use’ rule applied either at the 8-year benchmark or at the end of the license term, while licensees that meet the 8-year benchmark could be exempt from a ‘keep what you use’ rule”).

where it does provide coverage. At renewal, a licensee should be required to demonstrate “substantial service” in those service areas of the market where it has spectrum rights. This means that a licensee meeting the eight-year benchmark would have to show “substantial service” in the entire market area. A licensee with rights to only a quarter of the market would be required to demonstrate substantial service in that portion of the market where it has a license to serve.

B. Geographic-Based Requirements Should Not Apply To REAG Licenses.

For REAGs, strict geographic performance requirements are ill conceived and should not be imposed. To the extent that the Commission retains some REAG licensing in the final band plan, large operators will have the opportunity to capture large sections of the country and potentially the entire nation in an efficient process. These licensees will necessarily focus their initial infrastructure investment in population centers and, only secondarily, on filling in geographic coverage. Population based service requirements can achieve the objective of national or large regional roll out of advanced services while bidders for smaller geographic areas (CMAs and EAs) are pursuing a local strategy. Given the difference in size of larger licenses (REAGs) and smaller licenses, the Commission can be comforted that advanced services will roll out across much of the country’s population base while smaller market-sized licensees will be primarily focusing on the less densely populated portions of this country.

Geographic coverage requirements for REAG licensees are also at odds with the Commission’s policy of promoting opportunities for small businesses, rural telephone companies and new entrants. At a time when the Commission and State regulatory agencies are confronting the need to control governmental subsidies, the Commission

cannot ignore the reality that many sparsely populated rural areas can only support a limited number of providers. Geographic benchmarks will force larger REAG licensees to build-out in uneconomic areas merely to maintain future flexibility. The unintended consequence is that smaller providers will be driven out of these market areas as larger carriers, with likely more resources, are better able to withstand adversity in the marketplace.

The Commission should allow REAG licensees to either satisfy a population coverage requirement or provide “substantial service” by the end of their license term as is done with many other wireless radio services that have been subject to auction throughout the years.¹² The adoption of different performance requirements among license blocks in the same service that vary in market size is also consistent with past Commission practice.¹³

111. FULL DISCLOSURE IN THE BIDDING PROCESS HAS PROVEN HIGHLY SUCCESSFUL AND SHOULD APPLY TO THE 700 MHZ BAND AUCTION.

The Commission should not impose “anonymous” bidding for the upcoming 700 MHz Band auction.¹⁴ Open bidding has been a cornerstone of prior auctions and has

¹² See e.g., 47 C.F.R. § 24.203 (requiring broadband PCS licensees to meet either a population benchmark at the 5-year and/or 10-year mark or alternatively provide substantial service); 47 C.F.R. §§ 90.155, 90.767 (requiring Location and Monitoring Service and 220 MHz licensees to provide coverage to 1/3 of population within 5 years and 2/3 of the population in 10 years or to alternatively provide substantial service); 47 C.F.R. § 101.1325(b) (requiring Multiple Address System licensees to provide service to at least 1/5 of the population within 5 years and make a showing of substantial service within 10 years).

¹³ For example, in the 220 MHz service the Commission has given EA and EAG licensees the option of satisfying either a population coverage benchmark or providing substantial service while giving nationwide licensees the option of satisfying either population or geographic benchmarks or substantial service. See 47 C.F.R. §§ 90.767, 90.769. Similarly, in the Narrowband PCS service, while the FCC has provided nationwide, regional, and MTA licensees each with the option of meeting a geographic coverage benchmark, the amount of geographic area to be covered to meet the benchmark varies depending on the size of the license. 47 C.F.R. § 24.103.

¹⁴ FNPRM ¶ 246.

proven very successful in raising large sums of money for the U.S. Treasury. Auction No. 66, which was conducted with full bidder identity disclosure, raised \$13,700,267,150 in net bids.¹⁵ Any anticompetitive harm perceived by the Commission pales in comparison to the public benefits from full disclosure of bidding information during the auction.

Dobson has participated in several PCS auctions and the recent AWS auction, using the auction process to fill-in and expand its footprint where secondary market acquisitions have not been available. Dobson's success has been due in large measure to its ability to partner with large Tier I and other regional Tier II carriers in creating a national footprint for all carriers' customers in which the service offerings are transparent to the subscriber. Through arm's length negotiations with roaming partners using the same technologies, Dobson has positioned itself as a valuable roaming partner in creating a seamless nationwide network with other GSM-based carriers. In pursuing new acquisitions, either through the secondary market or in past spectrum auctions, Dobson needs to consider the identity and technology choices of neighboring licensees in order to determine the potential benefits of its business strategy.

Knowing who is bidding on which licenses and whether licenses in neighboring, larger markets beyond Dobson's ability to serve are likely to be won by carriers that will likely align with Dobson is critical to Dobson's legitimate business strategy. If the Commission conceals this information from bidders, Dobson would have difficulty

¹⁵ See *Public Notice*, "Auction of Advanced Wireless Services Licenses Closes," DA 06-1882 at 1 (rel. Sept. 20, 2006). While the Commission did subject this auction to a pre-auction assessment of likely competition, the Commission ultimately decided to allow open bidding for this auction. See *Public Notice*, "Auction of Advanced Wireless Services Licensees," DA 06-1525 at 1 (rel. July 28, 2006).

assessing the value to it of the various licenses. As a consequence, Dobson may have to curtail its participation in the auction to withstand significantly greater risks.

There are likely many other bidders of Dobson's size or smaller that would be similarly hindered in their ability to execute a reasonable business strategy in a "blind auction." Unlike the larger Tier I carriers, who can take greater risks in bidding on spectrum without such dependence on the technology of neighboring markets, smaller players simply cannot take such risks. It is incumbent on the Commission to avoid taking actions that will negatively impact the bidding opportunities for smaller entrants. Dobson thus urges the Commission to employ open bidding, which has proven successful in past auctions, in the 700 MHz Band auction.

IV. OPEN ACCESS REQUIREMENTS FOR COMMERCIAL SPECTRUM IN THE 700 MHZ BAND IS UNWARRANTED AND UNNECESSARY.

In the discussion of the Frontline proposal in the *FNPRM*, the Commission seeks comment on proposals to condition *at least* 30 MHz of commercial 700 MHz Band spectrum on the provision of open access, "including the right of a consumer to use any equipment, content, application or service on a non-discriminatory basis."¹⁶ Dobson strongly opposes any open access requirements on commercial spectrum.

The record shows in the on-going proceeding on the petition of Skype Communications, which requests similar treatment for all wireless carriers, that open access requirements are unwarranted and unnecessary in a competitive industry.¹⁷ And

¹⁶ *FNPRM* ¶ 290.

¹⁷ See AT&T Inc. Comments in RM-11361 at 23-24 (filed Apr. 30, 2007) (stating that open access principles of the *Carterfone* decision are limited to the monopoly wired telephone context and are inapplicable to competitive wireless services); CTIA Opposition in RM-11361 at 20-24, 30-38 (filed Apr. 30, 2007); MetroPCS Communications Inc. Comments in RM-11361 at 4-7 (filed Apr. 30, 2007); Qualcomm Inc. Comments in RM-11361 at 4-10 (Apr. 30, 2007); T-Mobile USA, Inc. Comments in RM-

as the *Eleventh Annual CMRS Competition Report* shows, there is effective competition in the mobile wireless industry – with 98 percent of the population living in counties with access to three or more providers.¹⁸ Consumers in the U.S. continue to enjoy “innovative pricing plans and service offerings” with competitive per minute rates for mobile calls that are comparatively less than in Western Europe and Japan.” Absent market failure, the statutory and Commission policy is to rely on market forces rather than regulation.²⁰

Providers should be allowed to distinguish themselves in the marketplace through attractive and innovative wireless devices and content applications and to provide products and services that consumers value most. Carriers should not be required to develop networks that support every conceivable consumer device or application. Given the nature of wireless, a shared resource, access capacity is inevitably restricted for others when a subscriber uses the system at a given time and location; this will be especially true as bandwidth-intensive applications, like streaming video and on-line services, proliferate. Therefore, carriers should be able to limit excessive capacity trends to ensure the network runs smoothly for all customers. Moreover, carriers can have legitimate

11361 at 3-6 (filed Apr. 30, 2007); see also Robert W. Hahn, Robert E. Litan, & Hal J. Singer, *The Economics of “WirelessNet Neutrality,”* AEI-Brookings Joint Center for Regulatory Studies (April 2007).

¹⁸ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, *Eleventh Report*, 21 FCC Rcd 10947 ¶ 2 (2006).

¹⁹ *Id.* ¶¶ 3-5.

²⁰ See e.g., *Jacqueline Orloff v. Vodafone AirTouch Licenses LLC, d/b/a Verizon Wireless et al.*, File No. EB-01-MD-009, 17 FCC Rcd 8987, 8998 ¶ 22 (2002) (“If a CMRS market were inadequately competitive, or if some other market failure limited consumers’ abilities to use market forces to protect themselves, Section 202 could be implicated”); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1478 ¶ 173 (“[I]n a competitive market, market forces are generally sufficient to ensure the lawfulness of . . . terms and conditions of service set by carriers who lack market power.”); *Id.* 1478-79 ¶ 175 (forbearing from tariff requirements for CMRS carriers and noting that section 202 “will provide an important protection *in the event there is a market failure*”) (emphasis added).

business reasons for restricting access to certain devices due to compatibility and security concerns. Open access requirements will do more harm than good for consumers.

CONCLUSION

For the reasons set forth above, Dobson respectfully urges the Commission to set forth rules and policies that encourage the efficient use of spectrum and ensure the rapid deployment of wireless services to rural communities.

Respectfully submitted,

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May 23, 2007

CERTIFICATE OF SERVICE

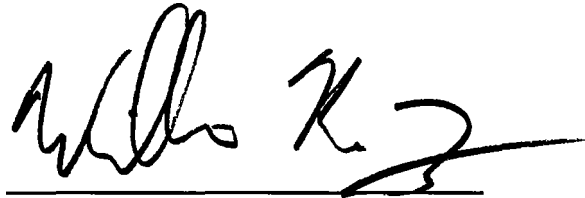
I, William R. Layton, hereby certify that on the 23rd day of May, 2007, copies of the foregoing "Comment" were served via-e-mail to the following:

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A handwritten signature in black ink, appearing to read 'William R. Layton', written over a horizontal line.

William R. Layton